

ESTATE OF THOMAS NICHOLAS : Order Docketing and Dismissing Appeal  
BLACK ELK :  
: Docket No. IBIA 00-33  
:  
: January 10, 2000

On January 3, 2000, the Board of Indian Appeals (Board) received a notice of appeal from the Superintendent, Pine Ridge Agency, Bureau of Indian Affairs (Superintendent). The Superintendent seeks review of an October 29, 1999, decision issued in the estate of Thomas Nicholas Black Elk (Decedent) by Administrative Law Judge Marcel S. Greenia. Because the Superintendent did not include a copy of the decision from which he was appealing, the Board requested and received a copy of the October 29, 1999, decision from Judge Greenia's office.

The October 29, 1999, decision determined Decedent's heirs and ordered distribution of his estate. Attached to the decision was a notice that anyone seeking review of that decision should file a petition for rehearing by the Judge as required by 43 C.F.R. § 4.241.

The Board has held that a BIA Superintendent is a proper party to seek review of a probate decision. See, e.g., Estate of Santana Nailor, 30 IBIA 150 (1996); Estate of Walter A. Abraham, 24 IBIA 86 (1993). However, a Superintendent, like any other party, must follow the regulations. Before appealing to the Board, the Superintendent must first seek rehearing from Judge Greenia, in accordance with 43 C.F.R. §§ 4.241(a) and the instructions given in the notice transmitting Judge Greenia's decision to the parties. Because the Superintendent did not seek rehearing before filing his appeal, his appeal must be dismissed as premature. Estate of Charles C. Jackson, 31 IBIA 178 (1997); Estate of Albert William Cobe, 28 IBIA 282 (1995).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed but dismissed as premature.

---

Kathryn A. Lynn  
Chief Administrative Judge

---

Anita Vogt  
Administrative Judge